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1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK :  
4 -----X  
5 ADONNA FROMETA,  
6  
7 PLAINTIFF,  
8  
9 -against-  
10  
11 MARIO E. DIAZ-DIAZ,  
12 and ALL AMERICAN HAULERS RECYCLING  
13 DEFENDANTS.  
14 -----X  
15

16  
17 DATE: May 12, 2008  
18 TIME: 9:35 a.m.  
19

20 EXAMINATION BEFORE TRIAL of an expert  
21 witness, CHARLES KINCAID, PhD, taken by the  
22 Defendants, pursuant to a subpoena, held at the  
23 offices of WILSON, ELSER, MOSKOWITZ, EDELMAN &  
24 DICKER, L.L.P., before Cassandra Phifer, a Notary  
25 Public of the State of New York.

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2 A P P E A R A N C E S :  
3  
4 SLAWEK PLATTA, ESQ.  
5 Attorney for the Plaintiff  
6 42 Broadway, Suite 1927  
7 New York, New York 10004  
8  
9 WILSON, ELSER, MOSKOWITZ,  
10 EDELMAN & DICKER, L.L.P.  
11 Attorneys for the Defendant  
12 150 East 42nd Street, 23rd Floor  
13 New York, New York 10017  
14 BY: STUART A. MILLER, ESQ.  
15 FILE #: 01502.00009  
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F E D E R A L   S T I P U L A T I O N S

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IT IS HEREBY STIPULATED AND AGREED  
by and between the counsel for the respective  
parties hereto, that the filing, sealing, and  
certification of the within deposition shall  
be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form  
of the question, shall be reserved to the times  
of the trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be signed before  
any Notary Public with the same force and effect  
as if signed and sworn to before this court.

\*     \*     \*     \*

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C H A R L E S   K I N C A I D, PH.D, called as a  
witness, having been first duly sworn by a Notary  
Public of the State of New York, was examined and  
testified as follows:

EXAMINATION BY

MR. COFFEY:

Q.   Please state your name for the record.

A.   Charles Kincaid, Ph.d.

Q.   Where do you reside?

A.   One University Plaza, Hackensack, New  
Jersey, 07601.

Q.   Good morning, Doctor.

A.   Good morning.

Q.   Are you going to testify in another  
matter after this today?

MR. PLATTA:   Objection.

A.   No.

MR. PLATTA:   You can answer.

A.   No.

Q.   Do you have another case coming up this  
week that you'll be testifying on in the matter of  
Djuric (phonetic)?

A.   I haven't heard yet if I'm going to be  
asked to be testifying.

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C. KINCAID, PH.D

MR. PLATTA:   Objection.

Q.   You're aware that that matter is on for  
trial?

MR. PLATTA:   Objection.

You can answer.

A.   I heard that it's possible; but I  
hadn't heard anything more than that.

Q.   Because we had noticed your deposition,

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10 and we were told that you were going be out of the  
11 country; but I have happen to be the trial counsel  
12 on that other matter, so I just didn't know if you  
13 were going to be available or not.

14 MR. PLATTA: Over objection.

15 You can answer.

16 A. Not if it's during next week.

17 Q. Going through a Life Care Plan, please  
18 tell me what's a Life Care Plan?

19 A. A Life Care Plan is a document that  
20 lays out a plan for an individual's future medical  
21 services, equipment needs, supplies over the course  
22 of their lifetime.

23 Q. And how does that differ from a doctor  
24 who might say you need surgery for X, Y or Z?

25 A. In collecting all of the individual

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1 C. KINCAID, PH.D

2 treating physicians, their opinions. So one doctor  
3 may have opinions about specific sets of services;  
4 but it's a combination of all of their treating  
5 physicians and their suggestions for future needs.

6 Q. Are you being paid for your time here  
7 today?

8 A. Yes, I am.

9 Q. How much?

10 A. The total is --

11 MR. PLATTA: Over objection.

12 You can answer.

13 A. It's \$325 per hour, plus \$1,000  
14 surcharge; because of the expedited time. So a  
15 total of \$1,650.

16 Q. Now, talking about Mr. Platta for a  
17 matter; have you worked with Mr. Platta before?

18 A. No.

19 Q. Have you ever worked for a prior firm,  
20 such as Dinkes & Schwitzer?

21 A. No, I have not.

22 MR. PLATTA: Over objection.

23 Q. Have you ever worked Napoli, Burn &  
24 Kieser (phonetic)?

25 MR. PLATTA: Over my objection.

0007

1 C. KINCAID, PH.D

2 You can answer.

3 A. Not that particular name.

4 Q. Which of their names, subsequent or  
5 before that did you ever deal with?

6 MR. PLATTA: Over Objection.

7 You can answer.

8 A. I think that it's Napoli, Burn &  
9 Ribcano (phonetic).

10 Q. Did you deal with them?

11 A. Yes, a couple of their clients.

12 Q. How did you first come to handle the  
13 Frometa case, who contacted?

14 A. Mr. Platta.

15 Q. When did he first contact you?

16 A. He contacted me on April 25th.

17 Q. Of what year?

18 A. Of 2008.

19 Q. And what did he do; did he send you a  
20 letter; did he call you or something else?

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21 A. He called me. And then he follow it up  
22 with a letter.

23 Q. And what did he say when you first  
24 spoke?

25 MR. PLATTA: Over objection.

0008

1 C. KINCAID, PH.D  
2 I believe that would be privileged.

3 MR. COFFEY: I don't think so.

4 Q. Go ahead; you can answer.

5 MR. PLATTA: I don't think so; because  
6 it's privilege information between expert and  
7 attorney.

8 Q. Did you bring your file here today?

9 A. Yes, I did.

10 Q. Do you have a correspondence between  
11 him and you in that file?

12 A. I don't believe so.

13 Q. Did he send you any letters, ever?

14 MR. PLATTA: You mean --

15 Q. Did he ever sent you any letters?

16 A. Not a letter, no.

17 Q. Did he send anything that gave you the  
18 information, a fax or anything such as that?

19 MR. PLATTA: By Counsel, I'm just  
20 responding that I sent a contract; which is a  
21 copy, which I seen in the file?

22 A. He sent the contract along with medical  
23 records.

24 Q. Whose contract was that; was that your  
25 contract?

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1 C. KINCAID, PH.D

2 A. My contract.

3 Q. And then he sent you the medical  
4 records?

5 A. Medical and some legal documents as  
6 well.

7 Q. Now, did you meet with Ms. Frometa?

8 A. Yes, I did.

9 Q. When did you meet with her?

10 A. I met with her on Saturday,  
11 April 26, 2008.

12 Q. Where did you meet with her?

13 A. In my offices.

14 Q. And where were your offices?

15 A. In Hackensack, New Jersey.

16 Q. Who else, if anyone, accompanied Ms.  
17 Frometa?

18 A. No one.

19 Q. How long did you met?

20 A. It was approximately two hours.

21 Q. And what did you do in those  
22 approximately two hours?

23 A. I interviewed Ms. Frometa to gain  
24 information about her background or medical  
25 condition and living situation.

0010

1 C. KINCAID, PH.D

2 Q. Did she talk to you about the accident?

3 A. She mentioned that she had been struck,  
4 yes. She didn't go into great detail.

5 Q. Did she talk to you about her employer?

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6 A. Um, --  
 7 MR. PLATTA: Over Objection.  
 8 You can answer.  
 9 A. I only briefly covered that; because my  
 10 understanding is there was no wage loss. So I  
 11 didn't ask her any extensive details about that.  
 12 Q. What medical records did you have to  
 13 review when you wrote up your report; are they all  
 14 included in your report?  
 15 A. Yes. If you look at pages five through  
 16 seven, you'll see all of the records listed that I  
 17 had a chance to review.  
 18 Q. You're not a medical doctor in any way;  
 19 is that correct?  
 20 MR. PLATTA: Over objection.  
 21 A. That's correct.  
 22 Q. And you didn't review any of her  
 23 employment records; did you?  
 24 A. No, I did not.  
 25 Q. Do you know when she first went back to

0011

1 C. KINCAID, PH.D  
 2 work after the accident?  
 3 A. Let me look in my notes. She might  
 4 have gone back for a short while afterwards. I  
 5 don't have any note to that effect.  
 6 Q. Did you ask her about her work history?  
 7 A. Just the type of work that she had  
 8 done.  
 9 Q. Just the type?  
 10 A. Yes.  
 11 Q. So you didn't talk about whether she  
 12 did or didn't go back to work, and if so, for how  
 13 long?  
 14 A. No, I did not.  
 15 Q. When did you prepare this report?  
 16 A. The report was prepared on May 1, 2008.  
 17 Q. Did you prepare that then on the first?  
 18 A. Well, I was preparing it during parts  
 19 of it, throughout that period, and the final  
 20 document was prepared on May 1st.  
 21 Q. Now, you said that it says in your  
 22 thing that you spoke to some of the doctors?  
 23 A. Yes, that's correct.  
 24 Q. Let's go through each of the doctors.  
 25 Talking about which doctors did you

0012

1 C. KINCAID, PH.D  
 2 speak with?  
 3 A. I spoke with Dr. Krisna.  
 4 Q. When did you speak with Dr. Krisna?  
 5 A. That was on May 1st.  
 6 Q. Now, what time did you speak with him  
 7 on May 1st?  
 8 A. I believe that it was -- you know, I  
 9 don't recall the exact time. I didn't write it  
 10 down. I believe though, because I was trying to  
 11 prepare, it was probably early afternoon; because I  
 12 could get in.  
 13 Q. And how long did you speak to him for?  
 14 A. Um, approximately 15 to 20 minutes.  
 15 Q. And what did you talk about in your  
 16 conversation?

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17 A. We talked about Ms. Frometa's future  
18 medical needs, services along with frequencies of  
19 services.

20 Q. Your future medical needs, what else?

21 A. The frequency of services, whether he  
22 agreed with the services and the frequency of those  
23 services.

24 Q. So, future medical needs, frequency of  
25 services and duration of services?

0013

1 C. KINCAID, PH.D

2 A. Yes.

3 Q. Did you have recommendation for him or  
4 did he give you recommendations. Um, I -- he gave  
5 me recommendations. I also told him about the  
6 results of my interview with Ms. Frometa, and he  
7 agreed that she would need -- would benefit from  
8 some psychotherapy?

9 MR. COFFEY: Move to strike that  
10 portion that is nonresponsive.

11 Q. She has not been treated by any  
12 psychotherapist or psychiatrist or anything in that  
13 way; are you aware of that so far?

14 A. Not that I'm aware of.

15 Q. But you're not a doctor, you're not a  
16 medical doctor, you're not a psychiatrist, you have  
17 no credentials, whatsoever, in the field the  
18 psychiatry?

19 A. Not in the field of psychiatry.

20 Q. And none of the related fields of  
21 psychiatry?

22 A. That's correct.

23 Q. So your recommendation is just a lay  
24 recommendation?

25 A. No, that's incorrect. I'm a

0014

1 C. KINCAID, PH.D

2 rehabilitation counselor. I'm trained to interview  
3 people, to counsel them, to identify conditions  
4 that I then can refer to professional for clinical  
5 documentation.

6 Q. But you have no training in psychiatry?

7 A. Not in psychiatry, no.

8 Q. You have no medical degree?

9 A. No.

10 MR. PLATTA: Over Objection.

11 You can answer.

12 Q. You have no psychiatric training to  
13 PSY, no medical or psychiatric designation?

14 MR. PLATTA: Over objection; asked and  
15 answered.

16 A. (No response.)

17 Q. And you're not a CSW, correct?

18 A. That's correct.

19 Q. What is a CSW?

20 A. That would be a certified social  
21 worker.

22 Q. So, what's does a certified social  
23 worker do?

24 A. They would do counseling with  
25 individuals.

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1 C. KINCAID, PH.D

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2 Q. So, which of yours certifies you to  
3 counsel individuals?

4 A. My certified rehabilitation counselor  
5 designation.

6 Q. But still you could make any referral  
7 that you would like or have any recommendations;  
8 but that has no more impact as I would as an  
9 attorney recommending someone?

10 MR. PLATTA: Objection?

11 A. I disagree totally. I work in  
12 psychiatric hospitals, I worked with individuals  
13 with psychiatric disabilities.

14 Q. Doesn't that differ from a nurse that  
15 worked in orthopedics, she would not be qualified  
16 to tell you whether you need a surgical procedure  
17 in orthopedics; would you agree or disagree with  
18 that?

19 MR. PLATTA: Over objection.

20 A. In working in the psychiatric field,  
21 would you be aware of symptoms, symptomatology of  
22 dangerous signals what to refer onto  
23 professionals?

24 Q. Also as a social worker or someone who  
25 has the ability to refer people, if you believe

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1 C. KINCAID, PH.D  
2 that there was some serious condition, you have the  
3 right to call 911 or the police or a psychiatric  
4 facility if you saw something that serious, right;  
5 wouldn't that be your obligation?

6 A. If you thought that it was imminent,  
7 yes.

8 Q. Did you see anything that you thought  
9 imminent with Ms. Frometa?

10 A. Not than date. I saw signs of  
11 depressed mood. I also had take depression  
12 inventory, which the score would indicate severe  
13 depression.

14 Q. So, if you saw something imminent, you  
15 have an obligation to notify someone; is that  
16 correct?

17 A. If I thought that the person was a  
18 danger to themselves or others, yes.

19 Q. You didn't see that?

20 A. Not on that day, no.

21 Q. So, when we talk about the future  
22 medical needs and some of the things that you  
23 talked about, did you have preliminary workup that  
24 you shared with Dr. Krishna?

25 A. Yes, I did have stop tables that I had

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1 C. KINCAID, PH.D  
2 started.

3 Q. Had you shared those were the doctor  
4 before you spoke with him?

5 A. Yes, I did.

6 Q. Which tables were they?  
7 Could I see those?

8 A. They're in my plan.

9 Q. So the tables that are in your plan you  
10 had prepared and sent to Dr. Krishna for his  
11 approval, for his review and comments?

12 A. Yes.



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13 Q. what comments did he make?  
 14 A. Um, he agreed with a number of where  
 15 his name appears, in areas where he agreed with the  
 16 recommendations.  
 17 Q. I'll get over to the table in a while.  
 18 You spoke to Dr. Krisna for about 15,  
 19 20 minutes, had you reviewed his billing records in  
 20 this matter?  
 21 A. No, I have not. Some bills were sent  
 22 to me, but these came later; but no, I did not  
 23 review.  
 24 Q. So, when you prepared this you hadn't  
 25 reviewed the medical bills?

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1 C. KINCAID, PH.D  
 2 MR. PLATTA: For Dr. Krisna you mean?  
 3 Q. For Dr. Krisna, you didn't review?  
 4 A. Now.  
 5 Q. Did you think that was important, to  
 6 review the medical records of Dr. Krisna when you  
 7 prepared the report?  
 8 MR. PLATTA: Medical records or bills?  
 9 MR. COFFEY: Bills.  
 10 MR. PLATTA: Over objection.  
 11 You can answer.  
 12 A. If they were available to me I would  
 13 have reviewed them.  
 14 Q. Would they have been important to  
 15 review when preparing a Life Care Plan?  
 16 A. It's a factor to consider; but not  
 17 critical.  
 18 Q. You were unable to consider it?  
 19 A. That's right.  
 20 Q. Had you asked for those bills?  
 21 A. I asked for anything that was available  
 22 pertaining to treatment.  
 23 Q. Would the bills have been something  
 24 pertaining to her treatment?  
 25 A. Yes, it would have shown the various

0019

1 C. KINCAID, PH.D  
 2 treatments and different costs.  
 3 Q. When we talk about the costs of  
 4 something, are you aware that there is a difference  
 5 between what a doctor charges and what the  
 6 reimbursement rates are?  
 7 A. Yes.  
 8 Q. And there are some things that could be  
 9 a big difference between what was charged and  
 10 what's reimbursed in the workers' Comp. or No  
 11 Fault; is that correct?  
 12 MR. PLATTA: Over my objection; you can  
 13 answer.  
 14 A. It depends on the insurance that your  
 15 charging; whether its worker's Comp., Medicaid or  
 16 private insurance.  
 17 Q. Or direct cash payment could differ as  
 18 well?  
 19 MR. PLATTA: Over objection.  
 20 A. Yes, that's true.  
 21 Q. You spoke to which other doctors?  
 22 A. Dr. Davy.  
 23 Q. How long did you speak to Dr. Davy?



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24 A. That was probably another 15 minutes to  
25 25. Twenty, 25.

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1 C. KINCAID, PH.D

2 Q. So, 15 to 25 or 20?

3 A. In that range yeah. It was a chart  
4 conversation.

5 Q. And what day did you speak with  
6 Dr. Davy?

7 A. That would have been the 28th.

8 Q. So April 28th?

9 A. Yes.

10 Q. And when did you speak with him; in the  
11 morning, afternoon, night or something else?

12 A. It was later in the day.

13 Q. And did you have Dr. Davy's records to  
14 review?

15 A. Yes, I did. At that time you reviewed  
16 every record that had been up-to-date, that had  
17 been provided to me and is listed in the Life Care  
18 Plan, the one that I have.

19 Q. Did you review any of his bills?

20 A. No, I didn't. I did not have his  
21 bills.

22 Q. So, at no time did you review

23 Dr. Davy's bills?

24 A. No, they were not available.

25 Q. Now, would those have being important

0021

1 C. KINCAID, PH.D

2 to have reviewed his bills?

3 MR. PLATTA: Over objection,  
4 Counselor.

5 A. It would have been another factor.

6 Q. And you were unable to consider that  
7 factor?

8 A. Um, I did not have the available to me,  
9 that's be correct.

10 Q. Wouldn't that have been an important  
11 factor to consider, how much had been billed and  
12 how much as reimbursed?

13 MR. PLATTA: Note my objection.

14 You can answer again.

15 A. It would have been one factor to  
16 consider.

17 Q. Which other factors are considered?

18 A. In what aspects of the plan?

19 Q. Let's talk about factors, delineate  
20 factors?

21 MR. PLATTA: Counselor, could you  
22 please answer the question, if you can?

23 A. You want me to go delineate the factors  
24 that I used in every aspect of the Life Care Plan?

25 MR. PLATTA: Which aspect are you

0022

1 C. KINCAID, PH.D

2 asking about?

3 MR. COFFEY: Every factor. You tell  
4 me.

5 MR. PLATTA: Do you understand the  
6 question?

7 MR. PLATTA: You have to be more  
8 specific.

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9 Q. Delineate the factors that you used on  
10 the Life Care Plan A through whatever?

11 A. Where do you want to start?

12 Q. I would like to start in the beginning  
13 and get to the end?

14 A. I would have considered the medical  
15 records, diagnoses, any treatment that the person  
16 had received, prognosis.

17 Q. What else?

18 A. Any limitations that would have been  
19 noted to the medical record.

20 Q. Limitations noted.

21 What else?

22 A. If there was information about any  
23 specific treatment recommendation, medication  
24 recommendation.

25 Q. So, treatment recommendations?

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1 C. KINCAID, PH.D

2 A. Any future surgical needs.

3 Q. Treatment recommendation, medication  
4 recommendation, future surgical needs.

5 What else?

6 A. That's all that I can think of right  
7 now from the medical record.

8 Q. How about from bills records?

9 A. If they were available I would have  
10 looked at them to see what services the person had  
11 received already.

12 Q. What's else did you look at from the  
13 billing records?

14 A. I could have looked at costs.

15 Q. And the cost of both billed and what  
16 actually was reimbursed?

17 A. That's correct.

18 Q. There is some type of table that talked  
19 about the difference of what is actually reimbursed  
20 dips on what carriers and stuff like that?

21 A. You can contact carriers to find out.  
22 I don't have such table.

23 Q. Do you keep records of that?

24 A. No, I don't.

25 Q. Isn't that relevant though of coming up

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1 C. KINCAID, PH.D

2 with what a cost is?

3 MR. PLATTA: Over objection.

4 You can answer.

5 A. No.

6 Q. So you don't think that's relevant  
7 though the different between what's actually built  
8 and that's actually reimbursed?

9 MR. PLATTA: Over objection.

10 Asked and answered.

11 A. No, I didn't prepare it at this point.  
12 That would have to be something for Nicomus  
13 (phonetic) to figure out.

14 Q. You haven't spoken to Nicomus this  
15 matter?

16 A. No, I have not.

17 Q. Now, in your thing it says a growth  
18 rate to be determined by a economist. Is there a  
19 standard factor that I'm not reading here or is

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20 that thing for charting?  
 21 A. That would be standard, because have  
 22 you to project out the cost overtime any economist.  
 23 Q. So, how were you able to testify as to  
 24 the cost without an economist; because the two  
 25 seems to be interconnected?

0025

1 C. KINCAID, PH.D  
 2 MR. PLATTA: Over objection,  
 3 Counselor.  
 4 A. I could testify as to the cost because  
 5 I researched an average cost in Ms. Frometa's area.  
 6 Q. So, we talked your research, the  
 7 average cost; what did you research; what book did  
 8 you use?  
 9 A. I contacted the providers first in the  
 10 area.  
 11 Q. Let's go through that which  
 12 specifically for Ms. Frometa. What carriers did  
 13 you contact?  
 14 A. Where would you like to chart?  
 15 Q. At the beginning.  
 16 who you did call, when? who did you  
 17 talk, the names that you spoke to?  
 18 A. Dr. Davy for pain management,  
 19 Dr. Stewart Khan, his receptionist.  
 20 Q. And that's what?  
 21 A. That's the pain management specialist.  
 22 Q. Where is Dr. Davy's office?  
 23 A. He's located in New York.  
 24 Q. And what's his address?  
 25 A. Ten Union Square, East 59th. That must

0026

1 C. KINCAID, PH.D  
 2 be Plaza, New York, New York.  
 3 Q. What's the zip?  
 4 A. I don't have the zip.  
 5 Q. What's the phone number?  
 6 A. 212-844-8756.  
 7 Q. And what why did you call him?  
 8 A. I was looking for other pain management  
 9 specialists to determine what they charge for the  
 10 same service.  
 11 Q. Have you ever worked with Stewart Khan  
 12 before?  
 13 A. No.  
 14 MR. PLATTA: Over objection.  
 15 A. No, I have not.  
 16 Q. How did you find his name?  
 17 A. In a list of pain management  
 18 specialists.  
 19 Q. What list?  
 20 A. I would have gotten that from the  
 21 internet.  
 22 Q. Do you have a copy of that list?  
 23 A. No, I do not.  
 24 Q. When did you do that search on the  
 25 Internet?

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1 C. KINCAID, PH.D  
 2 A. That would have been during the week  
 3 that I was preparing the Court.  
 4 Q. So, how many other doctors were on that

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5 list?  
6 A. There is one other.  
7 Q. How many doctors were on your Internet  
8 search list?  
9 MR. PLATTA: Over objection.  
10 A. I didn't count them.  
11 Q. Was it more than five?  
12 MR. PLATTA: Over objection.  
13 A. I'm sure that there were.  
14 Q. More than ten?  
15 MR. PLATTA: Over objection.  
16 A. I don't remember.  
17 Q. Did you destroy that list?  
18 MR. PLATTA: Over objection.  
19 Q. Can you describe that. It was actually  
20 printed?  
21 MR. COFFEY: I don't know what it is?  
22 A. No, I did not print it.  
23 Q. But it's in your hard drive somewhere?  
24 A. On the Internet at the time.  
25 Q. As you're aware, doctor, under the

0028

1 C. KINCAID, PH.D  
2 Federal rules of civil procedure we have a right to  
3 every piece of information that you use in  
4 formulating your opinion including the  
5 methodologies if anything that you reviewed.  
6 A lot of things are on the internet.  
7 what I'm trying to find out is what is this?  
8 A. I would have to find the website again;  
9 but I don't recall it.  
10 Q. Did put it anywhere in your report?  
11 A. No.  
12 Q. You didn't mention it?  
13 A. No, I didn't.  
14 Q. Would that have been relevant?  
15 MR. PLATTA: Over objection.  
16 A. Not that I thought it was. I just  
17 thought that the places that I looked for sources  
18 of cost would be the important factor.  
19 Q. So, you spoke to Dr. Steward Khan; how  
20 long did you speak to him?  
21 A. I spoke with the receptionist. And it  
22 would have been probably a five-minute conversation  
23 at the most.  
24 Q. You spoke with the receptionist about  
25 what?

0029

1 C. KINCAID, PH.D  
2 A. About costs.  
3 Q. And the receptionist told you the cost?  
4 A. Yes.  
5 Q. And what was the receptionist's name?  
6 A. I didn't get her name.  
7 what costs did I ask her about?  
8 Q. What costs did you ask her about?  
9 A. Initial consultations, follow ups and  
10 epidural injections.  
11 Q. Did you ask if these were reimbursable  
12 costs or what the costs were?  
13 MR. PLATTA: Over objection.  
14 A. I just asked what the costs were.  
15 Q. And do you know how long this person,

0512from.txt

16 this receptionist had worked in that office?  
 17 A. No, I do not.  
 18 Q. Do you know what her credentials are?  
 19 MR. PLATTA: Over objection.  
 20 A. No, I do not.  
 21 Q. We don't know her name?  
 22 A. No, I didn't get her name.  
 23 Q. You didn't speak with the doctor?  
 24 A. That's correct.  
 25 Q. You believe based upon speaking with a

0030

1 C. KINCAID, PH.D  
 2 receptionist is the same with speaking with the  
 3 doctor to talk about the costs?  
 4 MR. PLATTA: Over objection.  
 5 A. I think that she's a source of  
 6 information about the costs.  
 7 Q. But it's not a real firm source; it's a  
 8 receptionist at a doctor's office; is that correct?  
 9 MR. PLATTA: Over objection; asked and  
 10 answered.  
 11 A. I wouldn't say it's correct.  
 12 Q. Did she send you any literature, any  
 13 materials that had them in writing?  
 14 A. No, she did not.  
 15 Q. Let's go to the next doctor that you  
 16 spoke with?  
 17 A. Okay. This was a pain center,  
 18 University Pain Center.  
 19 Q. And what's their address?  
 20 A. 95 University Place, 8th floor,  
 21 New York, New York.  
 22 Q. Who did you speak with there?  
 23 A. Marie.  
 24 Q. And when it you speak with them, what  
 25 day?

0031

1 C. KINCAID, PH.D  
 2 A. It would have been during that week, I  
 3 believe.  
 4 Q. And also on Dr. Steward Kahn's office  
 5 what day of the week did you speak with help them?  
 6 A. Within that time period when I was  
 7 writing the report. I'm not sure.  
 8 Q. So you're unsure of the date?  
 9 A. Not sure of the date.  
 10 Q. Unsure of the time?  
 11 A. Yes.  
 12 Q. And this name also, University Pain  
 13 Management, were they also on your list, your  
 14 internet list?  
 15 A. Yes.  
 16 Q. Have you ever worked with them in the  
 17 past?  
 18 A. Not that I can recall, no.  
 19 Q. And you spoke with Marie, who is Marie?  
 20 A. She was in their billing department.  
 21 Q. How long did you speak with her?  
 22 A. That would have been five minutes or  
 23 less.  
 24 Q. And what did she speak to you about?  
 25 A. Initial consultation and follow up

0032

0512from.txt

C. KINCAID, PH.D

costs.

Q. What's her consult fee there?

A. It's \$500.

Q. And what's the other fees that they gave you?

A. Follow up is \$110 to \$125.

Q. And what else, what other fees?

A. Those were the only fees that she had available.

Q. How about Dr. Stewart Khan, what fees did they give for which things?

A. Initial consultation.

Q. How much?

A. \$350.

Q. What else?

A. Follow-ups.

Q. How much?

A. \$150 to \$250.

Q. For what else?

The epidural?

A. Yes, that was \$650 and up.

Q. If they do multiple levels of epidurals did they talk about what the costs would be?

A. They said \$650 and going up.

C. KINCAID, PH.D

Q. I want you to assume we got Dr. Davy in here the other day and he talked the epidurals and talked about the way that the consecutive levels, it started go down; do you disagree with Dr. Davy?

MR. PLATTA: Over objection.

A. The costs would go up depends to the extent it starts at \$650 and going up from there.

Q. Are you familiar with the concept of the cost multiple levels start to go down in subsequent level?

A. Costs, because it's the same subsequent procedure.

Q. How does that typically work in cost structure?

A. Depends on the extent of the epidurals. You have you cost cough for the surgeon, the anesthesia, injections.

Q. And also the rate of half he was talking about that there is a concept of each level goes down by half; are you familiar with that?

A. I didn't talk about that with him;, but I'm aware that there is a difference.

Q. So would it have been important to talk with her only treating physician about what the

C. KINCAID, PH.D

costs were?

MR. PLATTA: Over objection.

A. I did talk it him about the costs that I was suggesting and he commented on it.

Q. What did he comment on?

A. I don't have the comment because it wasn't in my plans as one of the costs.

Q. Now, we'll go back to University Pain Center.

You spoke to them about five minutes?

0512from.txt

12 A. Yes, that's about right.  
 13 Q. And the woman at Stewart Khan's office  
 14 you speak to her for about how long?  
 15 A. Probably the same amount of time. Just  
 16 to get the costs.  
 17 Q. Who did you say you were?  
 18 Did you identify who you were, who you  
 19 were looking for?  
 20 A. Yes, I said my name. I was preparing a  
 21 Life Care Plan, and I was trying to determine costs  
 22 in the area.  
 23 Q. And who else did you speak to?  
 24 A. In terms of in pain specialists, these  
 25 were the three that I spoke with, yes.

0035

1 C. KINCAID, PH.D  
 2 Q. Who is the third?  
 3 A. Dr. Davy.  
 4 Q. Dr. Davy, you spoke to him; how long  
 5 did you say that was?  
 6 A. During the course of our conversations,  
 7 so that was about 15 to 20 minutes.  
 8 Q. So you spoke to Dr. Davy on that Monday  
 9 you said then?  
 10 A. Yes.  
 11 Q. Had you already spoken with Dr. Khan's  
 12 office and University Pain Center?  
 13 A. No, that would have been probably right  
 14 after that.  
 15 Q. How were you able to confirm the costs  
 16 then with Dr. Davy and ask him what he thought if  
 17 you hadn't already spoken with Dr. Khan and  
 18 University Pain Center?  
 19 MR. PLATTA: Over objection.  
 20 A. I asked him what his costs were.  
 21 Q. You asked him his costs; but you spoke  
 22 to him about the other costs University Pain Center  
 23 and Dr. Kahn's costs?  
 24 MR. PLATTA: Over objection.  
 25 A. That's correct. Where he was,

0036

1 C. KINCAID, PH.D  
 2 Ms. Frometa received most of her treatment. She  
 3 receives most of her treatment from Dr. Davy and  
 4 Dr. Krishna.  
 5 Q. Where are they located?  
 6 A. Dr. Davy is located in Brooklyn at 1513  
 7 Voorhees Avenue. I believe that these in Brooklyn  
 8 as well.  
 9 Q. Did you speak with any Brooklyn  
 10 doctors, pain management doctors?  
 11 A. Just the one that I mentioned.  
 12 Q. Doing a survey of two physicians, why  
 13 didn't you speak to any pain management specialists  
 14 located in Brooklyn?  
 15 MR. PLATTA: Over objection?  
 16 A. I didn't speak to Dr. Davy.  
 17 Q. Other than Dr. Davy, why didn't you  
 18 speak to any others?  
 19 A. I want to get three sources, and those  
 20 three sources was representative of the  
 21 New York City area.  
 22 Q. Well, the prices could be different if



0512from.txt

23 we enter into Brooklyn, Queens Staten Island or  
24 Bronx; is that correct?

25 MR. PLATTA: Over objection.  
0037

1 C. KINCAID, PH.D

2 A. They do vary from a little bit from the  
3 people that I interviewed, yes.

4 Q. Is it fair to say that the costs in  
5 Brooklyn are a little cheaper?

6 MR. PLATTA: Over objection.

7 A. I think that you're actually wrong.  
8 I believe that it was initial \$400 with Dr. Davy  
9 and Dr. Khan had \$350. And \$500 University Pain.  
10 So there is a range.

11 Q. Which other people did you speak to  
12 when you took a survey number that you were looking  
13 to?

14 A. Are you still talking about pain  
15 management.

16 Q. I think I that we're done with pain  
17 management.

18 Did you talk to anyone else? Is there  
19 anyone else?

20 A. Not in pain management.

21 Q. Let get to the other ones.

22 A. Neurologist.

23 Q. These sheets that you're reading, I  
24 didn't see them in my disclosure. Are they in  
25 there. I didn't see these.

0038

1 C. KINCAID, PH.D

2 A. I don't think that they was sent to  
3 you. This my work.

4 Q. In the Federal rules we have a right to  
5 look at those. I request that we get that. It's  
6 methodology.

7 who else did you speak to?

8 A. Dr. Weinberg.

9 Q. Have you ever dealt with Dr. Weinberg  
10 in the past?

11 A. No, I haven't.

12 Q. What's his address?

13 A. 51st Avenue, NYU medical center,  
14 New York, New York.

15 Q. Did you speak with Dr. Weinberg?

16 A. No, I spoke with a receptionist.

17 Q. What was the receptionist's name?

18 A. I don't have it down.

19 Q. Now, did any of these doctors send you  
20 anything in writing, any faxes, any letters or  
21 anything that corroborates all of this information  
22 that you're saying that they gave you?

23 A. No, I did not receive a fax.

24 MR. PLATTA: Over objection.

25 Q. Did you receive any letters?

0039

1 C. KINCAID, PH.D

2 MR. PLATTA: Over objection.

3 A. From.

4 Q. E-mails?

5 MR. PLATTA: Over objection.

6 A. No.

7 Q. Other than you saying that you see to

0512from.txt

8 him, there is nothing in writing or nothing  
9 anywhere that shows this?

10 MR. PLATTA: Over objection.

11 A. There is nothing in my file other than  
12 my notes as to who I spoke with and the cost that  
13 they provided.

14 Q. The receptionist, you don't know her  
15 name?

16 A. No, I don't.

17 Q. How long did you speak to her?

18 A. That would have been approximately five  
19 minutes or less.

20 Q. And what did you ask her?

21 A. What the fee is or initial consultation  
22 and follow-up visits and follow-ups.

23 Q. And how much was the initial consult?

24 A. \$450.

25 Q. And follow-ups?

0040

1 C. KINCAID, PH.D

2 A. \$200.

3 Q. And then what else, if any other costs?

4 A. These were the only two costs.

5 Q. Which other neurologists did you speak  
6 to.

7 A. Roosevelt Hospital Center or the  
8 department of neurology.

9 Q. Who did you speak to there?

10 A. The receptionist.

11 Q. What is his name or her name?

12 A. I didn't write it down.

13 Q. You didn't know who they were?

14 A. I didn't ask.

15 Q. Did you think that it was relevant to  
16 find out the name of the person?

17 A. Sometimes I ask if it's possible.

18 Sometimes they don't want to give their name.

19 Q. Did this person give their name?

20 MR. PLATTA: Over objection?

21 A. I don't recall.

22 Q. Do you know if any of the people other  
23 than the one Marie, did anyone else give you their  
24 name?

25 MR. PLATTA: Over objection.

0041

1 C. KINCAID, PH.D

2 A. I have to look through my records.  
3 Yes, other people did.

4 Q. Well, we'll get to those.

5 So talking about the Roosevelt  
6 Hospital, what did they give you fees for.

7 A. Initial consultation and follow-ups.

8 Q. Over the -- I was just looking in your  
9 disclosure. In the last four years it appears that  
10 you testified about 55 times in court?

11 A. If sounds about right.

12 MR. PLATTA: You said five years.

13 MR. COFFEY: Yes, the last four years  
14 essentially.

15 Q. So, that's about only a month a little  
16 but more than that.

17 A. Probably a little bit more.

18 Q. How many Life Care plans do you prepare

0512from.txt

19 a year?  
 20 A. A year. I probably prepare anywhere  
 21 from 20 to 25.  
 22 Q. So, 20 10 25 life care plans?  
 23 A. Yes.  
 24 Q. What else do you prepare?  
 25 A. Vocational evaluation.

0042

1 C. KINCAID, PH.D  
 2 Q. How many vocational evaluations do you  
 3 do a yes?  
 4 A. At least twice that number.  
 5 Q. So, that's about forty to 50?  
 6 A. Probably more like 50 to 60.  
 7 Q. And how much do you charge for Life  
 8 Care Plan?  
 9 A. It varies. Depends on the amount of  
 10 hours. I charge \$200 per hour for my services.  
 11 Q. How much did you charge for this Life  
 12 Care Plan?  
 13 A. This was \$5,000.  
 14 Q. So, you spent 25 hours approximately?  
 15 A. Yes.  
 16 Q. And approximately how much do you earn  
 17 per year from your testifying or preparation of  
 18 reports?

19 MR. PLATTA: Over objection.  
 20 A. How much is my annual salary; is that  
 21 that what you're asking?  
 22 MR. PLATTA: Personal salary.  
 23 Q. The company that you're with, what  
 24 company?  
 25 A. Kincaid Vocational and rehabilitation

0043

1 C. KINCAID, PH.D  
 2 services.  
 3 Q. Are you owner of that?  
 4 A. Yes.  
 5 Q. Are you shareholder of that?  
 6 A. Yes.  
 7 Q. Are you an officer of that?  
 8 A. Yes, am.  
 9 Q. How would you like be give the income  
 10 salary?  
 11 MR. PLATTA: Again over objection.  
 12 A. Is it something that we could do off  
 13 the record.  
 14 MR. COFFEY: Off the record.  
 15 (Whereupon, an off-the-record  
 16 discussion was held.)  
 17 Q. So, it's fair to say, doctor, that you  
 18 testify and you prepare these things; is that your  
 19 main business?  
 20 A. No, I can also do career counseling.  
 21 Q. How many people do you control counsel?  
 22 A. I usually have a case load of half  
 23 dozen people.  
 24 Q. So it's about six?  
 25 A. At anyone time.

0044

1 C. KINCAID, PH.D  
 2 Q. What else do you have?  
 3 A. Assistant technology evaluation.

0512from.txt

4 Q. what are they?  
 5 A. That's evaluating people's notes for  
 6 technology, either in the work place or in the  
 7 home.  
 8 Q. How long have you been doing that for?  
 9 A. A couple of those a month.  
 10 Q. A couple of those a month?  
 11 A. Yes.  
 12 Q. What else?  
 13 A. Just primary service.  
 14 Q. And then you still though between the  
 15 vocational evaluations, the life care plans, you're  
 16 doing about seven of those a month?  
 17 A. That's about right, yeah.  
 18 Q. In testifying in court is about maybe  
 19 twice a month?  
 20 MR. PLATTA: Objection.  
 21 You already asked. He answered 12 to  
 22 15 times.  
 23 Q. And let's go back to the neurologist.  
 24 You spoke with a receptionist but you don't know  
 25 her name.

0045

1 C. KINCAID, PH.D.  
 2 Let's go to the next place  
 3 Dr. Maymoncol (phonetic).  
 4 Q. Did you speak to Dr. Maymoncol?  
 5 A. No, I spoke with his receptionist.  
 6 Q. On any of these, did you speak with any  
 7 of the doctors?  
 8 A. No, I did not. I would have it.  
 9 Though don't think that they were available to  
 10 speak with me.  
 11 Q. Other than Dr. Davy, which doctors did  
 12 you speak to?  
 13 A. A psychologist, I spoke with Dr.  
 14 Stanley Hoffman, PH.D. That would be the only.  
 15 Q. So, when you speak with Dr. Davy.  
 16 How did you find him to be? Was he  
 17 forthcoming with information that you needed?  
 18 A. Yes, he was he was very helpful.  
 19 Q. Was he a pleasant individual?  
 20 A. We had an good conversation.  
 21 Q. Dr. Call, what did he charge  
 22 consultation?  
 23 A. \$575.  
 24 Q. What else?  
 25 A. Follow-ups \$250.

0046

1 C. KINCAID, PH.D.  
 2 Q. And this is for neurologist, right?  
 3 A. That's right.  
 4 Q. Two hundred and what?  
 5 A. \$285.  
 6 Q. And what neurologist is she currently  
 7 seeing?  
 8 A. That would be Dr. Krishna.  
 9 Q. How often does she go to Dr. Krishna?  
 10 A. Um let's look and see if I made a note  
 11 of that.  
 12 Q. Did you speak with Dr. Krishna?  
 13 A. Yes, I did Krishna is every three  
 14 months.

0512from.txt

15 Q. Every three months?  
 16 A. Yes, that's right.  
 17 Q. And that's for life he recommended?  
 18 MR. PLATTA: Off the record.  
 19 (Whereupon, an off-the-record  
 20 discussion was held.)  
 21 A. Yes, that's through life expectancy.  
 22 Q. We went past Dr. Call and then we went  
 23 to internal medicine?  
 24 A. Yes.  
 25 Q. Who is she currently seeing

0047

1 C. KINCAID, PH.D  
 2 for internal medicine?  
 3 A. She not seeing anyone for internal  
 4 medicine that I'm aware of.  
 5 Q. She not see anyone right now?  
 6 MR. PLATTA: For internal medicine  
 7 only, right?  
 8 MR. COFFEY: Right.  
 9 A. For internal medicine.  
 10 Q. Who did you talk to for their costs?  
 11 A. Manhattan Internal Medicine Associates.  
 12 Q. You spoke to a receptionist?  
 13 A. Yes, that's right.  
 14 Q. What else?  
 15 A. That's all.  
 16 Q. What did they give a cost for?  
 17 A. Initial consultation and follow ups.  
 18 Q. How much was theirs?  
 19 A. \$250 for initial consultation and \$100  
 20 for follow-ups.  
 21 Q. So every one of these, this is what they  
 22 tell you right off of the phone if you call up, it  
 23 has nothing to do with what the reimbursement would  
 24 be?  
 25 A. Right this is their cost.

0048

1 C. KINCAID, PH.D  
 2 Q. That's their charge, that's not their  
 3 cost?  
 4 MR. PLATTA: Over objection.  
 5 Q. It's another suggested retail price?  
 6 MR. PLATTA: Over objection to the  
 7 question or statement.  
 8 Q. Is that they're suggested cost?  
 9 MR. PLATTA: Over objection.  
 10 Q. Their suggested charge; because the  
 11 charge is different than the cost?  
 12 A. Yes, suggested charged.  
 13 Q. And suggested charged is changed based  
 14 upon many factors, correct?  
 15 MR. PLATTA: Over objection.  
 16 A. It could very well, if people have  
 17 health care, health insurance typically then that  
 18 comes down, Medicaid reimbursements is not these.  
 19 MR. PLATTA: Over objection.  
 20 A. If this is your final reimbursement it  
 21 would vary, depending on the person's insurance.  
 22 MR. PLATTA: If there is one, right.  
 23 MR. COFFEY: Right if there is one.  
 24 Q. And also for cash, it could, if someone  
 25 wanted to pay cash?

0512from.txt

0049

1 C. KINCAID, PH.D  
2 MR. PLATTA: Over objection.  
3 Q. Dr. Davy talked about there is a  
4 different price for cash?  
5 MR. PLATTA: Over objection.  
6 A. Yes.  
7 Q. Did Dr. Davy tell you that there was a  
8 different price for cash?  
9 MR. PLATTA: Over objection.  
10 A. We didn't discuss that.  
11 Q. So, would that have been a factor if  
12 Dr. Davy also has a cash discount? Would that be a  
13 factor in lowering the costs?  
14 MR. PLATTA: Over my objection.  
15 A. It might provide average costs based on  
16 the cost centers.  
17 Q. You're talking about what the most cost  
18 could be?  
19 MR. PLATTA: Over objection.  
20 A. The average cost.  
21 Q. But if assuming I'm an allowed to ask  
22 an expert assumption assume that there is health  
23 insurance, would the cose be lower?  
24 A. If we'll be personally reimbursed if  
25 the person has either insurance.

0050

1 C. KINCAID, PH.D  
2 Q. To take the cost down?  
3 MR. PLATTA: Objection.  
4 Q. So let's take mr. Call has a \$575  
5 consult. You're saying that any insurance carrier  
6 will pay him \$575?  
7 MR. PLATTA: Over objection.  
8 A. I'm saying that that is the charge that  
9 he indicates for that service.  
10 Q. It's like putting a manufacturers  
11 suggested retail price?  
12 MR. PLATTA: Over objection.  
13 A. That's why I refer to the economists to  
14 determine any offsets in the charge or the service.  
15 Q. So a economist would be important to  
16 getting a final number, yes.  
17 Q. So, in order to get a final number or  
18 conclusion you would need an economist?  
19 A. My consult is based on the average  
20 average charge for these services, the economist  
21 would have to give you the present value with all  
22 of the offsets sit.  
23 Q. So all the present values with offsets  
24 could be significantly lower than you're doing?  
25 A. I don't know. That would needs an

0051

1 C. KINCAID, PH.D  
2 economist.  
3 Q. Would you need an economicist to come  
4 up with a final number?  
5 MR. PLATTA: Over objection.  
6 You can answer again?  
7 A. When it reflects all of factors that we  
8 just discussed.  
9 Q. So, without the economists what  
10 conclusion, based upon your numbers in and of

0512from.txt

11 itself can one get to?

12 A. You could get to this is the charge for  
13 the services at this frequency and this duration  
14 over the person's life time.

15 Q. If we assume that Dr. Davy testified  
16 that Workers Comp., No Fault comes in at an average  
17 at half on a lot of these procedures, you're saying  
18 that you don't know of that out in the field. I'm  
19 finding that had?

20 MR. PLATTA: What is the question  
21 sorry.

22 Q. You're saying when you are cost or  
23 charges let's say you call in a cost it's not a  
24 cost, it's really what a doctor is charging; is  
25 that fair to say?

0052

1 C. KINCAID, PH.D

2 MR. PLATTA: Over objection.

3 A. Right, in that sense it with be their  
4 charge.

5 Q. So, when you have a table that that  
6 says cost, it's really a charge?

7 A. It's chared by the physician's but cost  
8 to the individual.

9 Q. What I'm sayinging, let's take  
10 Ms. Frometa, if she had No Fault, which I know you  
11 know she had No Fault here, the No Fault  
12 reimbursement schedule is the same as the charges,  
13 you're saying?

14 MR. PLATTA: You know that No-Fault  
15 ends at \$50,000.

16 MR. COFFEY: I know but I'm trying to  
17 get to the cost.

18 Q. Let me ask you this: when you spoke to  
19 any of these providers, did you is ask them what  
20 the different rate of reimbursement could be for  
21 initial consults?

22 MR. PLATTA: Over objection.

23 A. No, I did not.

24 Q. So that could differ?

25 MR. PLATTA: Over objection.

0053

1 C. KINCAID, PH.D

2 Depends on the insurance carrier, if  
3 this was there.

4 Q. And also differ from with someone pays  
5 cash over a credit card?

6 MR. PLATTA: He over objection.

7 You can answer.

8 A. That's possible.

9 Q. So is it fair to say doctor, that you  
10 could come to a conclusion of ultimate evaluations  
11 of an economist?

12 MR. PLATTA: Over objection.

13 A. The economist would be important to get  
14 it back to present value and take in account all  
15 offests, insurance, no fault and other wise.

16 Q. So, in addition to just being a factor,  
17 it would be necessary to have an economist?

18 MR. PLATTA: Over my objection.

19 A. Not to my preparation of live care  
20 plan, my part. I'm providing the services an,  
21 average costs in the area. That's the next step



0512from.txt

22 this bigger picture and to be refined.  
 23 Q. So in order for the jury to come up  
 24 with conclusion, they would need a economist?  
 25 A. I think that an economist would help

0054

C. KINCAID, PH.D

1 clarify.  
 2 Q. So not only would it help, but it would  
 3 be necessary to clarify?  
 4 MR. PLATTA: Over objection.  
 5 You can answer?  
 6 A. It would be someone else that would be  
 7 able provide to put other factors, that I explained  
 8 to you.  
 9 Q. Or the significant value would be  
 10 significantly less?  
 11 MR. PLATTA: Or higher.  
 12 Q. Or higher?  
 13 A. You have to talk to the economist.  
 14 Q. So, the goal standard is we need an  
 15 economist?  
 16 A. You needed.  
 17 MR. PLATTA: Over objection.  
 18 A. You need the life care manner to  
 19 prepare the plane for the economist so that they  
 20 know what the average costs are.  
 21 MR. PLATTA: Counsel, if you want to  
 22 stipulate to an economist in this case, let me  
 23 know.  
 24 MR. COFFEY: Okay.

0055

C. KINCAID, PH.D

1 We'll move on.  
 2 Q. Which other doctors did you speak to  
 3 when say say internal medicine. Who were the other  
 4 one?  
 5 A. West Side Internal medicines.  
 6 Q. Who did you speak to there?  
 7 A. Receptionist.  
 8 Q. What did he tell you was the charge at  
 9 the initial consultation, \$250?  
 10 A. Follow-ups \$150, \$125.  
 11 Q. So, again it was the receptionist?  
 12 A. Yes.  
 13 Q. Then who is the next one?  
 14 A. Dr. Steffon Siegel.  
 15 Q. And did you speak to Dr. Siegel or the  
 16 receptionist?  
 17 A. Receptionist.  
 18 Q. And what did they get?  
 19 A. Initial consultation \$250. Follow up  
 20 \$150.  
 21 Q. You're aware of the Federal standards  
 22 we have the term culmative, where you differ what  
 23 your term is. You're opining differs from the  
 24 treating doctor that actually went in there and did

0056

C. KINCAID, PH.D

1 all of this stuff, where do you differ?  
 2 MR. PLATTA: Are you talking about  
 3 costs.  
 4 MR. COFFEY: Cost and future life plans.  
 5 Q. You're not a physician, correct?

0512from.txt

7 A. Yes.

8 Q. Where do you say that you have  
9 training, that you're able to opine differently  
10 than a treating physician?

11 A. I'm not opining different than a  
12 treating physician. I'm trained in life care  
13 manner. I'm incorporating a plan, a future plan  
14 for Ms. Frometa's needs.

15 Q. Did you speak to a chiropractor; is she  
16 currently going to a chiropractor?

17 A. No, she's not.

18 Q. Why would you go to a chiropractor  
19 then? Who says that she needs a chiropractor for  
20 life? You know that the chiropractor was covered  
21 by No Fault?

22 He has a chiropractor on his charges?

23 A. Right.

24 Q. Does she need a chiropractor.

25 Did anyone say that she needed to go

0057

1 C. KINCAID, PH.D

2 see a chiropractor.

3 Did Dr. Davy say that?

4 A. No, see did. No, he did not recommend  
5 that.

6 Q. Did Dr. Krisna recommend that?

7 A. No, he it not.

8 Q. So which of you her treatments, if any?

9 A. They didn't.

10 Q. So then the chiropractor, she didn't  
11 really needs the chiropractor?

12 MR. PLATTA: Over objection.

13 A. It was not recommended.

14 Q. Did you ever speak to Dr. Babu?

15 A. He was not available to speak to. He  
16 responded by mail.

17 Q. Is there a letter from Dr. Babu?

18 A. There is a questionnaire that he filled  
19 out.

20 Q. You have that with you?

21 A. Yes.

22 Q. Could I see that.

23 Dr. Babu seems to disagree with some of  
24 the Life Care Plan conclusions.

25 Would that be fair to say.

0058

1 C. KINCAID, PH.D

2 MR. PLATTA: Over objection.

3 Q. You would have to be more specific?

4 A. Dr. Babu only calls for follow up  
5 medical treatment for one year.

6 MR. PLATTA: Over objection, within his  
7 field. Within his report what he signed.

8 Q. Neurosurgical report that's what he's  
9 referring to. He's not calling for future  
10 surgeries?

11 A. That's correct.

12 Q. He's calling for any treatment outside  
13 of one another?

14 MR. PLATTA: You're talking about  
15 neurosurgery treatment, not any treatment at  
16 all.

17 Q. Dr. Babu fees, I'm not going into

0512from.txt

18 specialties?

19 MR. PLATTA: He's responding.

20 Q. Dr. Babu sent you back a questionnaire  
21 signed?

22 MR. PLATTA: From him within his  
23 specialty.

24 Q. Is there a coverletter with that?

25 A. This was what was sent to him.

0059

1 C. KINCAID, PH.D

2 Q. Did he send you a coverletter with it?

3 A. No, there is a paragraph that describes  
4 the purpose.

5 Q. Did you incorporate what Dr. Babu said,  
6 put it into your final report?

7 A. Yes I did. He recommends four  
8 follow-up visits for one year. He recommends  
9 physical therapy for one year. He recommends that  
10 she be treated by a pain management specialist.  
11 And it says that she's likely to have a normal life  
12 expectancy.

13 Q. So, if he's saying medical treatment  
14 for one year, doesn't that differ from her life  
15 expectancy?

16 MR. PLATTA: Over objection.

17 That's his services. He's talking  
18 about what that he provided.

19 Q. What kind of doctor is he?

20 A. Neuro surgeon.

21 Q. Wouldn't it be important to see what a  
22 neuro surgeon thinks about pain management?

23 A. No, they have different specialities.  
24 They have different needs.

25 Q. So, if I could. Just so we're clear,

0060

1 C. KINCAID, PH.D

2 it says he says follow-up visits four times a year  
3 for one year?

4 A. Yes.

5 Q. And your thing does say regarding  
6 future treatment needs?

7 A. Yes.

8 Q. So that would be dr. Babu's opinion as  
9 to her future treatment; is that correct?

10 MR. PLATTA: And Dr. Krishna.

11 Q. Just talking about Dr. Babu.

12 MR. PLATTA: Are you talking about the  
13 response that he received?

14 MR. COFFEY: About what's in this  
15 document. This is a three page thing that  
16 went over May 1st, the fax says May 1st 101.  
17 So he says that see needs only one year in his  
18 medical opinion. It could differ. She's not  
19 limited to his speciality. That's just  
20 something for what his opinion is correct.

21 MR. PLATTA: What is the yeah, right.

22 Q. Dr. Babu was sent this questionnaire  
23 and he responded to it?

24 A. Yes.

25 Q. And he has responded when you asked him

0061

1 C. KINCAID, PH.D

2 questions, you need to obtain updated information  
Page 25

0512from.txt

3 regarding future treatment needs?

4 A. That's right.

5 Q. And you were asking how many follow up  
6 visits and he said four times per year for one  
7 year;.

8 Is that correct?

9 A. That's correct.

10 Q. And you said diagnostic procedure that  
11 he recommends, he says none?

12 A. That's correct.

13 MR. PLATTA: Within his specialty.

14 MR. COFFEY: He's a neurosurgeon. I  
15 mean neurosurgery.

16 MR. PLATTA: Maybe you could establish  
17 whether is for surgery.

18 A. Dr. Davy is a neurosurgeon, that's.

19 Q. Do you know what Dr. Davy's specialty  
20 is?

21 A. Pain management.

22 Q. What is his board certification?

23 A. I think that it would be pain

24 management. I'm not sure.

25 Q. What if I say anesthesiologist?

0062

1 C. KINCAID, PH.D

2 A. That makes sense; because pain  
3 management specialists are anesthesiologists.

4 Q. They're not spine specialists?

5 A. Not usually.

6 Q. Here is someone that has a back injury,  
7 that is essentially what we're dealing with in this  
8 case?

9 A. Back and neck.

10 Q. But now if we're going to talk about  
11 that. Dr. Babu is a board certified neuro surgeon  
12 correct?

13 A. Yes.

14 Q. And he is able to opine on what he  
15 believes the future medical needs are?

16 MR. PLATTA: Over objection.

17 In the field of neuro surgery.

18 MR. COFFEY: It does say that.

19 MR. PLATTA: Every doctor would answer  
20 the question.

21 MR. COFFEY: That's your opinion. I'm  
22 saying what I got in questionnaire.

23 MR. PLATTA: If you want to establish  
24 that with the witness.

25 Q. Did you ask him what type of diagnostic

0063

1 C. KINCAID, PH.D

2 procedure did he recommend?

3 A. Yes, I did.

4 Q. What did he say?

5 A. None.

6 Q. Did you ask him his thoughts about  
7 follow-up visits?

8 A. Yes.

9 Q. What did he say in response?

10 A. He said four visits for one year.

11 Q. Did you ask him about physical therapy?

12 A. Yes.

13 Q. And what did he say?

0512from.txt

14 A. Three times a month for one year.  
 15 Q. Did he recommend occupational therapy?  
 16 A. No.  
 17 Q. Did he recommend massage therapy.  
 18 A. No.  
 19 Q. Did he recommend chiropractic  
 20 treatment?  
 21 A. No.  
 22 Q. Did he recommend exercise at a local  
 23 health club?  
 24 A. It says no answer.  
 25 Q. Not applicable?

0064

1 C. KINCAID, PH.D  
 2 A. Could be, yeah.  
 3 Q. Did he talk about any gym that he  
 4 recommended?  
 5 A. He said none.  
 6 Q. Medications; did he talk about any  
 7 medications?  
 8 A. He said none.  
 9 Q. Did he recommend any future surgical  
 10 procedures?  
 11 A. He said none.  
 12 Q. Did he recommend health assistance?  
 13 A. No.  
 14 Q. Did he recommend that she go to a pain  
 15 management specialist; correct?  
 16 A. That's true, yes.  
 17 Q. Did he talk about what complications  
 18 may develop in the future?  
 19 A. He said not none.  
 20 Q. Did he anticipate that she would have a  
 21 normal life expectancy?  
 22 A. That's correct.  
 23 Q. Then he signed it?  
 24 A. Yes.  
 25 Q. That's all that we know that he talked

0065

1 C. KINCAID, PH.D  
 2 about, right?  
 3 A. Yes.  
 4 Q. Did you get any other questionnaires  
 5 like that from anyone else?  
 6 A. No, I spoke to with them personally.  
 7 There wasn't time to get the questionnaires.  
 8 Q. Did those same questions that you asked  
 9 of all of other doctors?  
 10 A. Um, yes, I would have gone through the  
 11 list with them.  
 12 Q. Could I see that?  
 13 A. These are my notes.  
 14 Q. Let me have this one again?  
 15 A. Sure.  
 16 Q. When you spoke to Dr. Davy and ask him  
 17 how many follow up visits, the times per year what  
 18 did he say?  
 19 A. Every six weeks.  
 20 Q. For how many years?  
 21 A. Six weeks for one year approximately  
 22 eight times. And then one time every three months  
 23 thereafter.  
 24 Q. And then every three months for life?

0512from.txt

25 A. Yes.

0066

1 C. KINCAID, PH.D

2 Q. What type of diagnostic procedure did  
3 he recommended?

4 A. Um, he didn't recommend any.

5 Q. Did he recommend physical therapy?

6 A. He did not, no.

7 Q. I'm going to double check though before  
8 I sign-off on that.

9 Actually, he did, as well as Dr. Babu.

10 Q. Well, Dr. Babu said physical therapy  
11 for one year three times a month?

12 A. Right.

13 Q. And between the two doctors?

14 A. Between the two Dr. Davy was one year  
15 of physical therapy for one year with three times a  
16 month at least.

17 Q. Did he talk about occupational therapy?

18 A. Were not recommended.

19 Q. Massage therapy?

20 A. Not recommended.

21 Q. Chiropractic treatment?

22 A. Did not recommend that.

23 Q. What equipment did he recommend; any  
24 equipment?

25 A. No, he did not.

0067

1 C. KINCAID, PH.D

2 Q. And what medication did he talk about  
3 that he was currently prescribing?

4 A. He talked about four.

5 Q. She's currently on five medications?

6 MR. PLATTA: Over objection.

7 Could you tell him?

8 A. Just let me check my records here.  
9 Yes, she's on five, Lyrica, Baclofen, Opana,  
10 Amitriptyline and Esgic plus.

11 Q. When you came up the costs of computing  
12 the meds sheet, how did you come up with the meds?

13 A. Also different sources for those.

14 Q. Are we done with the doctors or do you  
15 still have more that you spoke to?

16 A. More.

17 Q. Which other ones that you spoke to?

18 A. That relate to Life Care Plan there are  
19 psychiatrist, psychologist.

20 Q. I see a pediatricist.

21 A. But it wasn't used.

22 Q. What would you have read that would  
23 have been useful for pediatricist?

24 A. She indicate difficulties during her  
25 own self care, bending to take care of her feet or

0068

1 C. KINCAID, PH.D

2 nails; but that wasn't something that I included in  
3 the report.

4 Q. Which other doctors?

5 A. Psychologist, psychiatrists.

6 Q. But there is no claim for psychiatric  
7 if this matter; are you aware of that?

8 A. Um, no, I wasn't.

9 Q. So I'm saying who speak to you about

0512from.txt

10 getting psychologist or psychiatrists involved?  
 11 A. Dr. Krishna.  
 12 Q. Had he recommended or referred her to  
 13 one?  
 14 A. No.  
 15 Q. So it's not in the records anywhere.  
 16 How did this come out?  
 17 A. Sure. It came out in my interview with  
 18 her. The tests that I did, her expressions of  
 19 depression.  
 20 Q. But now are those subjective or ob  
 21 jective findings?  
 22 A. Well, the objective part would be the  
 23 need to be clarified through clinical tests.  
 24 Q. It's a subjective almost to someone,  
 25 something to questions in a test; that true?

0069

1 C. KINCAID, PH.D  
 2 MR. PLATTA: Note my objection.  
 3 Q. The person is asked to answer  
 4 corrective to the test and in the course of probing  
 5 with their symptoms and following some depression.  
 6 I'm trying to verify it during the process. She's  
 7 going to you, her attorney setting up an interview  
 8 with you. She's knows that you're there, you're  
 9 disclosed for trial for damages; but there is a  
 10 subjectiveness to that; is that correct?  
 11 MR. PLATTA: Over objection.  
 12 what is your question.  
 13 Q. Isn't there a subjectiveness to the  
 14 tests?  
 15 MR. PLATTA: Over objection.  
 16 Q. what you call a psychiatry screening?  
 17 A. The person is asked to answer  
 18 corrective, that's why it's only an indication. It  
 19 would have been verified through a clinician for  
 20 their tests.  
 21 Q. where are her tests and where are the  
 22 results?  
 23 A. She hasn't been.  
 24 Q. From the test that you administered.  
 25 A. It probably took about five to ten

0070

1 C. KINCAID, PH.D  
 2 minutes.  
 3 Q. who said that she needed to get MRIs  
 4 done of lumbar and cervical spine?  
 5 A. That would have been Dr. Krishna.  
 6 Q. And what kind of Doctor?  
 7 A. A neurologist.  
 8 Q. Did you speak to him and come up with  
 9 these?  
 10 A. Yes, that's correct.  
 11 Q. Did you factor in that Dr. Babu said  
 12 zero?  
 13 A. Yes.  
 14 Q. where does that come in; because it has  
 15 recommended by Dr. Krishna and has to recommended  
 16 that Dr. Babu says zero. So, it would seem those  
 17 numbes would be cut in half?  
 18 A. I say who recommends the service so  
 19 that the reader would know where it's coming.  
 20 Q. where does it say not recommended by



0512from.txt

21 Dr. Babu?

22 MR. PLATTA: Over objection.

23 Q. Does it say that anywhere?

24 A. It says who it's recommended by.

25 Q. Why is there no notation?

0071

1 C. KINCAID, PH.D

2 MR. PLATTA: Over objection?

3 A. The table that you're referring to has  
4 only names of doctors that you actually  
5 recommended, if someone didn't recommended that  
6 they won't be there.

7 Q. You gave a report, it's a complete  
8 report, correct?

9 A. It's a report used to prepare the Life  
10 Care Plan.

11 Q. You said that you factor it in, how did  
12 you factor it in?

13 MR. PLATTA: Over objection.

14 Q. Did you believe Dr. Krisna over Dr.  
15 Babui?

16 A. I represented who is recommending it  
17 and the factor.

18 Q. You said you factored it in, what  
19 factor and, where does to show you that you  
20 factored in that Dr. Babu said zero for future  
21 diagnostic film and I didn't see it here.

22 MR. PLATTA: Over objection?

23 A. Maybe the word factor I looked at all  
24 of the machines what's in the plan are the services  
25 that are recommended, not one that are not

0072

1 C. KINCAID, PH.D

2 recommended.

3 Q. If someone disagrees with  
4 recommendations, it's not included?

5 MR. PLATTA: Over objection?

6 A. If he had recommended I would have his  
7 name as well. Whoever recommended the services is  
8 indicated as recommended by.

9 Q. So one doesn't recommend it's not  
10 relevant for your Life Care Plan?

11 MR. PLATTA: Over objection?

12 A. That's not included in the column.

13 Q. It's not noted any where unless there  
14 is something that I missed.

15 Is there something that I missed in the  
16 disclosure.

17 MR. PLATTA: It actually states who  
18 recommended, diagnosed by.

19 Q. That wasn't provided in the disclosure,  
20 nothing that someone doesn't agree with. I receive  
21 a Life Care Plan that talks about what's  
22 recommended and read Dr. Babu, and you can say he  
23 is a specialist but Dr. Babu happens to have a  
24 totally different opinion of what your Life Care  
25 Plan is. And I have to cross examine to find this

0073

1 C. KINCAID, PH.D

2 out. That's where I have a right to find out under  
3 Federal rules.

4 Q. Where does it get factred in?

5 MR. PLATTA: Over objection.

0512from.txt

6 A. I've asked all of the physicians what  
7 they're recommending, the services that they're  
8 recommending. Go to the Life Care Plan my file is  
9 open.

10 Q. Your file is open. It should have been  
11 disclosed. This is not in your disclosure?

12 MR. COFFEY: I have a right to anything  
13 relied upon this within.

14 MR. PLATTA: Of course you have to.

15 MR. COFFEY: Not the deposition at the  
16 disclosure they're totally different. I have  
17 a right in the Federal court under the rules  
18 to have anything included in the disclosure.

19 Q. Is it fair to say that Dr. Babu does  
20 not agree with your Life Care Plan?

21 MR. PLATTA: Over objection?

22 A. The life care take into account all of  
23 the treating physicians, some of their  
24 recommendations.

25 Q. You disregard some of them.

0074

1 C. KINCAID, PH.D

2 A. His recommendations are include, as  
3 well as the other physicians.

4 Q. Where are his recommendatoins included  
5 in the Life Care Plan specifically?

6 A. Let me get those tables.

7 Q. Where it says four times for one year?

8 A. Yes. Yes, on Page 8 of the tables.  
9 Neurosurgeon.

10 Q. Where is it included?

11 A. Under physical therapy three times  
12 monthly for one year.

13 Q. Does it say anywhere that he says said  
14 that there is no need for future surgical  
15 procedure?

16 MR. PLATTA: Over objection.  
17 Could I see this piece of paper.  
18 (Witness complying.)

19 MR. PLATTA: Read back the question.  
20 (Whereupon, the referred to testimony  
21 was read back by the Reporter.)

22 MR. PLATTA: Over objection.

23 You can answer.

24 MR. PLATTA: Again, we're taking about  
25 Life Care Plan.

0075

1 C. KINCAID, PH.D

2 MR. COFFEY: You can call it Life Care  
3 Plan, whatever you like. It's not this big  
4 mythical thing I'm asking about you  
5 incorporated it when you did your report.

6 Q. Were you aware that Dr. Babu said there  
7 is no need or future surgical procedures; yes or  
8 no?

9 A. Yes.

10 MR. PLATTA: Over objection.

11 Q. So, he has a opinion different than  
12 Dr. Davy and Dr. Krisna; is that correct?

13 MR. PLATTA: Over objection.

14 A. Yes, they each in their own specialties  
15 have different recommendations.

16 Q. He's a neurosurgeon, spinal

0512from.txt

17 neurosurgeon; is that correct?  
18 A. That's correct.  
19 Q. So he didn't agree that there was a  
20 need for a neuro stimulator; you didn't see that in  
21 his response; did you?  
22 MR. PLATTA: Over objection.  
23 A. I saw Dr. Davy who is pain management  
24 specialist, who recommended that type of services.  
25 Q. You have medical experience now?

0076

1 C. KINCAID, PH.D  
2 MR. PLATTA: Over objection.  
3 A. (No response.)  
4 Q. Are you qualified as a doctor?  
5 MR. PLATTA: Over objection;.  
6 Asked and answer?  
7 A. No, I'm not. I've reviewed many pain  
8 management specialist reports.  
9 Q. But that doesn't make you an expert  
10 with pain management; does it?  
11 MR. PLATTA: Over objection.  
12 A. No, I'm not an expert in pain  
13 management.  
14 Q. You're not an expert in treating the  
15 spine, correct?  
16 A. That's correct.  
17 Q. So Dr. Babu is a board certified  
18 neurosurgeon, you don't disagree with that correct?  
19 A. No, I don't disagree.  
20 Q. So, a spine surgeon does opine about  
21 the spine and treatment of the spine; is that  
22 correct?  
23 MR. PLATTA: Over objection?  
24 A. That's correct.  
25 Q. So if Dr. Babu, if there was a need for

0077

1 C. KINCAID, PH.D  
2 surgery or procedure or anything like that, he was  
3 asked that question and said no?  
4 A. That's correct. He said not to future  
5 surgical.  
6 MR. PLATTA: Within his field.  
7 A. Within his field, right.  
8 Q. You're saying that neurostimulator is  
9 not surgery?  
10 MR. PLATTA: Over objection.  
11 Q. I'm asking what he's trying to say.  
12 MR. PLATTA: He's listing every  
13 procedure that he has.  
14 Q. What are saying?  
15 A. Surgery to plant a device which stops  
16 pain signals an giving hopefully relieve to the  
17 individual.  
18 Q. That's not spine surgery according to  
19 you?  
20 MR. PLATTA: Over objection.  
21 Q. Are you saying it's a spine surgery.  
22 MR. PLATTA: Over objection.  
23 A. It is a surgery.  
24 Q. So, are you're saying that Dr. Babu as  
25 a spine surgeon cannot, with any certainty opine

0078

1 C. KINCAID, PH.D

0512from.txt

2 with someone's spine?

3 MR. PLATTA: Over objection.

4 Q. Have you ever been involved in Aubart  
5 A-U-B-A-R-T (phonetic)?

6 A. No.

7 Q. Has anyone made any claims to you  
8 testifying on a Aubart basis?

9 A. No, they have not.

10 Q. Never seen one motion that was filed by  
11 our firm against any matters that you've been on?

12 A. No, never.

13 MR. PLATTA: Over objection.

14 Q. Okay.

15 would you be surprised if I were to  
16 have any motions regarding Aubart challenges that  
17 have been against us.

18 MR. PLATTA: Over objection.

19 A. Never seen one.

20 Q. Has anyone ever told you about any?

21 MR. PLATTA: Over objection.

22 A. Never.

23 Q. When we talk about Dr. Krishna?

24 MR. PLATTA: Counselor, are you saying  
25 that there is something that was not disclosed

0079

1 C. KINCAID, PH.D

2 from the Plaintiff's counsel; is that what  
3 you're referring to.

4 MR. PLATTA: No.

5 Q. My question is with regard to  
6 Dr. Krishna, how long did you speak with him?

7 A. About 15 to 20 minutes.

8 Q. What did you go over with him.

9 Do you have notes of what you talked  
10 about?

11 A. Yes.

12 Q. Where are they?

13 A. Davy or Krishna.

14 Q. I'm talking both of them; because I  
15 haven't seen either of them?

16 A. (indicating).

17 Q. So you have the Aides For Independence,  
18 none of doctors recommended that?

19 A. No, I recommended them.

20 Q. So you would disagree with the doctors?

21 A. No, I won't. It's not a disagree, part  
22 of my expertise in assistive technology. A  
23 certified assistant technology practitioner. So I  
24 understand that specialty. I have the expertise to  
25 recommend those kinds of devices.

0080

1 C. KINCAID, PH.D

2 MR. PLATTA: Over my objection.

3 Q. But none of the physicians recommended  
4 them?

5 MR. PLATTA: Over my objection.

6 A. No, they did not indicate them.

7 Q. Now, I'm reading your notes about the  
8 home health aide, and almost one million, if you  
9 start figuring out 1.5 million dollars where you're  
10 adding is home health?

11 A. Yes we.

12 Q. It says that indicated in the

0512from.txt

13 assistance home health aide, now I don't see  
14 anywhere where it says full-time. You have down  
15 almost \$38,000, \$37,830 a year?

16 A. Yes. It's four to eight hours a day,  
17 seven days a week.

18 Q. Now, with Dr. Davy he says he was not  
19 sure if she needed home health care at this type  
20 and Dr. Babu does not agree with that. So is it  
21 fair to say that is a different range of opinions  
22 on this?

23 MR. PLATTA: Over objection.

24 A. I do not. Who agrees with that  
25 recommendation and who recommends it.

0081

1 C. KINCAID, PH.D

2 Q. And stop people disagree with it?

3 MR. PLATTA: Note my objection. He

4 didn't express that opinion, just Dr. Krishna.

5 Q. Not express that opinion, meaning that  
6 you don't agree with it?

7 MR. PLATTA: Over objection.

8 Q. I mean, yes or no, there was not total  
9 agreement within that; is that correct?

10 MR. PLATTA: Over objection?

11 A. I asked ask them what they recommended  
12 and they did not recommend two. Dr. Krishna said it  
13 would be necessary.

14 Q. He didn't say it would be necessary, he  
15 say that -- he said that the assistance of a home  
16 health aid if she don't continue to receive help  
17 from family. That does not say that she should  
18 have four to eight hours a day, seven days a week  
19 on a ongoing basis; did he say that?

20 A. We discussed a range it. It's my notes  
21 are there; but I would have told him given him  
22 ranges. And we have agreed to this range.

23 Q. Your notes say something a little  
24 different.

25 MR. PLATTA: Over objection.

0082

1 C. KINCAID, PH.D

2 MR. COFFEY: Off the record.

3 (Whereupon, an off-the-record  
4 discussion was held.)

5 Q. Did you talk that him about that?

6 A. I talked to him about the need of home  
7 health aide.

8 Q. Does she still have a driver's license?

9 A. Yes, she does.

10 Q. Does she still drive a motor vehicle?

11 A. I think that she said she very rarely  
12 drives. She still does drive on occasion.

13 Q. Does is she leave her home?

14 MR. PLATTA: What do you mean?

15 Q. Does she leave her house?

16 How does she get to see you?

17 A. Various appoints she has to go to,  
18 sure.

19 Q. Does is go to them?

20 A. Medical appointments.

21 Q. And she's able to go there on her own.

22 MR. PLATTA: You're asking something  
23 that would be within the knowledge of my

0512from.txt

24 client not an expert.  
25 Q. You said earlier that she came to your

0083

1 C. KINCAID, PH.D  
2 office by herself; is that your testimony?

3 A. She walked into the office by herself,  
4 apparently she was transported by someone else.

5 Q. How do you show she was transported by  
6 someone elsewhere? Do you know that?

7 A. She didn't say who transported her.

8 Q. What did she say?

9 A. She said she very rarely drives and  
10 needed someone to drive her.

11 Q. Did she say that someone transported  
12 her there on that day?

13 A. On that day, yes.

14 Q. Does it note that in your report?

15 A. I don't believe that I did.

16 Q. So, you're saying that she needs this  
17 home health care four to eight hours a day seven  
18 days a week on an ongoing basis for the rest of her  
19 life?

20 A. That's the opinion.

21 MR. PLATTA: Okay; asked and answered.

22 Q. That opinion. Is that the opinion of

23 Dr. Krishna?

24 A. That's the opinion of Dr. Krishna but not  
25 in my notes.

0084

1 C. KINCAID, PH.D

2 Q. It's different than what your notes  
3 say?

4 MR. PLATTA: Over objection.

5 A. It doesn't say the exact number of  
6 hours, but just that he agrees with the service,  
7 but I recall the conversation that it was  
8 reasonable.

9 Q. What did you write down in your notes  
10 the important part of conversation?

11 A. Those are the things that I noted down.

12 Q. Well, the thing that would be the one  
13 point, what you're recommending. There is no  
14 clarity in your notes about that.

15 MR. PLATTA: Counselor you can ask

16 Dr. Krishna. You would have a chance to  
17 cross-examine him.

18 Q. I'm asking the doctor. He's making his  
19 conclusion on that.

20 Is there some other note that I'm not  
21 seeing or is that it?

22 A. This is the sum of my notes.

23 Q. What percentage of people in your life  
24 care plans do you recommend home health care for?

25 A. Percent.

0085

1 C. KINCAID, PH.D

2 Q. More than 90 percent of them?

3 A. I wouldn't say that.

4 Q. More than 80 percent?

5 A. I really never looked at percentages.

6 Q. Let's go back in some of these cases.

7 Just you just testified two weeks also three weeks  
8 also Adams versus Verizon lines; do you remember

0512from.txt

9 that case?  
 10 A. Yes.  
 11 Q. Did you recommend a health aide there?  
 12 A. I would have to look at the cause.  
 13 Q. Bromore versus Lanwards (phonetic).  
 14 Did you recommend health care there?  
 15 A. I don't believe.  
 16 Q. So.  
 17 Q. Marion verses United States of America;  
 18 do you remember that case?  
 19 A. Yes.  
 20 Q. Did you recommend home health aide  
 21 there?  
 22 A. I don't believe there is as life care  
 23 there.  
 24 Q. Code ^ inaudible.  
 25 Do you remember that matter?

0086

1 C. KINCAID, PH.D  
 2 A. Yes.  
 3 Q. Did you recommend a health aide in that  
 4 matter?  
 5 A. No.  
 6 Q. Biner verses New York stock Exchange  
 7 (phonetic)?  
 8 A. I don't recall.  
 9 Q. That was with my office with Matt Ross?  
 10 A. Yes.  
 11 That case I don't remember if I  
 12 recommended home health aide or not.  
 13 Q. Again Dinkser (phonetic); divorce case?  
 14 A. Divorce case.  
 15 Q. Reinvak verses Florida?  
 16 A. Divorce.  
 17 Q. Anonymous?  
 18 A. Same, says a mistrail.  
 19 Q. Harrington verse J.A. Jones?  
 20 A. I don't recall.  
 21 Q. Webster verses 711 out in New Jersey?  
 22 A. I believe so. There was some T B I.  
 23 Q. Now, were you aware of that she weapon  
 24 back to work /T-R a period of time as both as you  
 25 /STPAOU ward discuss at Rick and Rick /-S calf have

0087

1 C. KINCAID, PH.D  
 2 describe after this accident. I would /STKR to  
 3 look at the would be.  
 4 Q. I /WAP you /AOUPL that she did would  
 5 that beep me /AOS capable the takes care herself?  
 6 MR. PLATTA: Before the accident.  
 7 Q. After the accident?  
 8 A. No /EURPL a look the individual as they  
 9 are presently.  
 10 Q. When -- are you going to meet with her  
 11 again?  
 12 A. I have no plan to.  
 13 Q. So, then there was really just prepared  
 14 for this litigation your report?  
 15 MR. PLATTA: Over objection much  
 16 obviously Counsel he's he expert it was  
 17 retained./PO are purpose.  
 18 Q. You were retained as an expert?  
 19 A. I was retain today Life Care Plan in



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20 for for /PH-T that.

21 Q. As a litigation to /TPEF.Court /-PB  
22 over objection there a privilege conversation.

23 Q. When you /SPAO /EB to Mr. Pat at.

24 Q. Did you knee you were going to be  
25 called a X /SPER in matter /-RPLT I know that it

0088

1 C. KINCAID, PH.D

2 was a litigation platter that would be presented to  
3 in court.

4 Q. Okay.

5 Q. Did you speak to some psychologists /-S  
6 an psychiatrists. Let's go back to that.

7 Q. Do you they she ever ^ ~'s ^ ~s'  
8 psychiatric /TKREUFRT or sky /KOLG gist. Not  
9 /THAEUP ^ ~'s ^ ~s' wear?

10 A. Lynn /TPHARDZ /HOLS man and I speak  
11 with the ^ figure ^ if anything /-S refer tall /-S  
12 ^ sister ^ center /SEUPBDZ vernacular end /TKPWHR-S  
13 you ever spoken any of that's doctors offs before  
14 in preparation of any Life Care Plan?

15 A. /H-P often F F /PHRAFPL. N.

16 Q. Which other doctors?

17 A. Rosa /SREPT hospital ^ sister ^ center  
18 autopsy spoke with Diane -- last one is H A U.S. M  
19 A N /-P a spoke Diane.

20 Q. And who else?

21 A. Stanley Hoffman person eel Lee about  
22 his services.

23 Q. And then psychiatrist. Dr. Mill ton S  
24 I'm R O TA, Sol cities psychiatric consume /-S Dr.  
25 V A TS A L, TH A K K A R, Dr. ^ Rose ^ rose than R

0089

1 C. KINCAID, PH.D

2 O N E N last name H /\*FPL Z A M I.

3 Q. That's fine /-P we are going back  
4 through let's talk about your /TROUGS on vocation  
5 ago an Rehabilitation services a Life Care Plan is  
6 I dynamic document based upon ^ pub ^ public  
7 standard of practice what are the public standard  
8 of practice?

9 A. Those would be through the life care  
10 plans /OERB action. what are they, what  
11 documents. I might have have to provide a list for  
12 you ^ there ^ in could you provide that list for me  
13 it's part of disclosure /SWUR ^ ~'s ^ ~s' supposed  
14 to give me all of the document that you re lieu  
15 upon citizen /TEUF I can data and everything that  
16 you reviewed on so if is a published standard of  
17 practice if I could get that I would /PROERB either  
18 ^ there ^ in /PWHRO makes that ^ pub ^ public  
19 standard of practice?

20 A. That's the life care plans  
21 associations.

22 Q. That's a document. Yes,  
23 ^ they're ^ their avail cable ^ threw ^ through the  
24 association there is also standard as available  
25 ^ threw ^ through the enter national /SOERBG action

0090

1 C. KINCAID, PH.D

2 of Rehabilitation professionals.

3 Q. If you could?

4 A. which I could provide.

0512from.txt

5 Q. If you could that would be great un the  
6 Federal standard we have a right to everything if  
7 we could get that published standard of practice  
8 would pee excellent. The data a /TPHAL sigh which  
9 data did you and lies?

10 A. Medical records.

11 Q. What else. I used the inform retained  
12 during the tip ter view I also Yoo laced the I'm  
13 put from the physicians treats  
14 ^ figure ^ if anything /-GS and I also utilize the  
15 research that I did into the cough /TPH-S the local  
16 area.

17 Q. Would you have a chronic health care  
18 need have you a foot note cop pain /-DZ definition  
19 of /AOUPB verses tear of nor that at American act  
20 relife care plan nurse?

21 A. Yes.

22 Q. Could you give eye company over that  
23 other than the foot number neither what the did he  
24 ever /TPHEURB un is?

25 A. Yes.

0091

1 C. KINCAID, PH.D

2 Q. It doesn't have that what data  
3 specifically is. Know, you say that the cost  
4 figures are based upon current Ray if the New York  
5 east coast region it's really you're specifically  
6 spoke to people in Manhattan isn't that correct  
7 /-BT Manhattan and Brooklyn.

8 Q. Well, other than Dr. Chris that an  
9 Dr. Davy did you speak to any provide I outside of  
10 Manhattan.

11 Q. If you're talking about physicians stop  
12 of the other services though were in the Brooklyn  
13 area?

14 MR. COFFEY: I don't care about the  
15 psychiatrist. I care about the physicians.

16 MR. PLATTA: Psychiatrist are MDs.

17 MR. COFFEY: Some are MDs or  
18 psychologists, right.

19 Q. Stanley Hoffman, that's a psychiatrist  
20 in Brooklyn?

21 A. I don't see anything else.

22 Q. It also says Dr. Turail, figures to be  
23 determined by economist. So we go back to that.  
24 Also you said that you need an economist in this?

25 A. To bring it back to present value and

0092

1 C. KINCAID, PH.D

2 factor in the other future value and any oversets.

3 Q. What are offsets?

4 A. That would be other means of paying for  
5 the services.

6 Q. Do you know whether she applied for  
7 social security disability, no, she hasn't, that  
8 I'm aware.

9 Q. What is social security disable?

10 A. That's a Federal program through the  
11 social security administration that provides income  
12 for individuals if it's social security disability  
13 they would have to, I believe it's 20 credits  
14 credit to quality. And they're provided with  
15 income based upon their amount of money

0512from.txt

16 contributed.

17 Q. Do you know if she is eligible for  
18 that?

19 A. A person with her type of disability she  
20 could definitely apply.

21 Q. Do you know if she has applied?

22 A. Not that I'm aware of.

23 Q. That would be an offset?

24 MR. PLATTA: Over objection.

25 A. If she's accepted, there is medical

0093

1 C. KINCAID, PH.D

2 insurance through special disability.

3 Q. Does she have Medicare or Medicaid as  
4 insurance?

5 A. Not that I aware if she applied for any  
6 other insurance.

7 Q. Does she have any other health  
8 insurance that she told you.

9 A. Not that she told me about.

10 Q. Did she tell you at any time that she  
11 had been involved in a subsequent motor vehicle  
12 accident in March of last year?

13 A. No.

14 Q. Did you review her employment records  
15 in any way that shows a motor vehicle accident?

16 A. No, I did not review her employment  
17 records.

18 MR. PLATTA: Again, Counselor, just a  
19 reminder he's a vocational expert, Life Care  
20 Plan expert, that's why there is no subsequent  
21 in the report.

22 MR. COFFEY: That's your opinion.  
23 Off the record.

24 (Whereupon, an off-the-record  
25 discussion was held.)

0094

1 C. KINCAID, PH.D

2 Q. Physical limitations, was this part of  
3 her questionnaire.

4 A. It was part of the interview process  
5 questionnaire about her.

6 Q. Able to lift, sit, climb?

7 A. Yes.

8 Q. This is based upon these questions?

9 A. Yes, and some would be from the medical  
10 record, but primarily.

11 Q. But also said she has difficulty  
12 driving more than one hour. So she's able to  
13 drive, if it's less than one hour?

14 A. She drives up to one hour and then it  
15 becomes more pain?

16 A. She said that she has difficulty  
17 driving at all, but one hour is her max.

18 Q. Now, if she had migraines headache,  
19 there is no one in the medical record that talks  
20 about migraines.

21 Did you review anything any medical  
22 records that said migraine are related to this?

23 A. That was in complaints, which I need to  
24 record; but didn't provide for that in the Life  
25 Care Plan.

0095

0512from.txt

C. KINCAID, PH.D

Q. You didn't see anything, not one bit of medical records talking about migraine headaches being related to the accident?

A. No, I would have referred to physicians for that.

Q. Now, talking about --

A. She says she has pain; but she is performing her home making duties. She does do things. She does have limits and she requires extensive help.

Q. Now, it says that you say it the pertinent medical history. She has no previous medical history prior to the motor vehicle accident. Did she tell you of subsequent motor vehicle accidents?

A. No, she did not.

Q. Now, did you ever review her pharmaceutical records from the pharmacy where she goes?

A. I have physical therapy, chiropractor. No, I did not get those.

Q. Wouldn't they be important?

A. They would be another factor, if they were available.

C. KINCAID, PH.D

Q. But they weren't available?

A. No, they did not happen.

Q. Now, let's talk about provider comments.

In the report you don't have anything from Dr. Babu; why is that?

You have provided comments men from Dr. Davy and Dr. Krishna, how come there is no provider comment from Dr. Babu?

A. I do say that it was provide -- information was provided, but right here I have at the last paragraph, middle, Dr. Babu recommended four follow up visits at his office for the next year and physical therapy three times a month for one year.

Q. Is it fair to say that under "provider comments" you're really only writing down what they recommend, not that what contraindicate?

MR. PLATTA: Over objection.

That's correct.

Q. Now when we talk about Option B in your home health care assistance?

A. Yes.

Q. It talks about starting at age 55.

C. KINCAID, PH.D

what doctor talked about it should change at age 55. That was with Dr. Krishna. And it's also in terms of Life Care Plan itself. It's provided another option if she didn't need it or had continued to get assistance.

Q. Well, is there a thought that put a neurostimulator in this and all of this stuff makes her better?

MR. PLATTA: Objection.

A. I don't know, but it could happen.

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12 MR. PLATTA: Over objection.  
13 I would have to refer to the physician  
14 for that.  
15 Q. So, if you differ to the physicians and  
16 the treatment is successful, there would be no need  
17 for health care?  
18 MR. PLATTA: Note my objection.  
19 A. It can be a wide range in successful, I  
20 don't know.  
21 Q. So, a week after a neurostimulator  
22 would be put in it would be too soon?  
23 MR. PLATTA: Note my objection?  
24 A. You said that based on that the  
25 neurostimulator is good, it provided success in  
0098

1 C. KINCAID, PH.D  
2 pain reduction and improving functions in -- sorry,  
3 what is the question right now?  
4 Q. I want you to assume that you  
5 neurostimulator in successful in providing pain  
6 reduction and improving function, could we assume  
7 that?  
8 A. Yes.  
9 Q. If we assume that, why do you say that  
10 there City is the need for health care aid?  
11 A. It would be starting at a later age.  
12 Q. Which doctor said that if there was a  
13 need, if it was successful for future home health  
14 care aid?  
15 A. I discussed it with Dr. Krisna.  
16 Q. And he said that age 55?  
17 A. He said that's an age that would likely  
18 to occur.  
19 Q. Is it reflected in your notes anywhere  
20 age 55?  
21 A. No, it's not.  
22 Q. But you remember now that he said that?  
23 A. I remember, that's why I put it in the  
24 plan. If it's not successful -- she would need to  
25 immediately start at her current age. If the  
0099

1 C. KINCAID, PH.D  
2 condition still could deteriorate and she could  
3 take it later. That was the extent of the  
4 discussion.  
5 Q. Or it could be Option C that it was?  
6 MR. PLATTA: Are you talking about  
7 something that is in the report?  
8 MR. COFFEY: That's noticed.  
9 Q. Could be successful and won't need it?  
10 A. You would have to talk to the  
11 physicians about that.  
12 Q. Now, your conclusions about  
13 significantly or permanently successful, that is  
14 based upon your review of the medical records, you  
15 can't conclude that?  
16 MR. PLATTA: Over objection.  
17 A. It's based upon my review of the  
18 medical records.  
19 Q. So, that's really something that is  
20 best left to the physicians that are going to  
21 testify?  
22 A. That's correct. That would be their  
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23 decision.

24 Q. You're not going to opine?  
25 MR. PLATTA: Over objection.

0100

1 C. KINCAID, PH.D

2 Q. In the same with the updated that at  
3 the medical services are a direct result of  
4 injuries to the cervical spine and lumbar spine,  
5 you're not reflecting causation; that's left for  
6 the doctors to opine?

7 MR. PLATTA: Over objection.

8 A. Yes, the doctor would decide causation  
9 and it will reflect whatever is read in the medical  
10 records. That they would be the ultimate deciders.

11 Q. Just the decision of it requires  
12 continued follow-up care from treating physicians,  
13 therapists and other medical providers.

14 They'll ultimately opine that  
15 themselves at trial you are not able to conclude  
16 what she does on doesn't. You're assuming saying  
17 what you essentially put together, you marked all  
18 of this, and that's what you are saying your  
19 conclusion is?

20 A. In a discussion with the doctor.

21 Q. Based upon your discussion with the  
22 doctor. Not that you're saying she needs this, you  
23 can only say based upon your discussion with the  
24 doctors?

25 A. That's correct.

0101

1 C. KINCAID, PH.D

2 Q. Now, her future life expectancy, where  
3 did you get that from, which table?

4 A. It National Vitals Statistics Center  
5 For Disease Control.

6 Q. Now, your cost when you came up, these  
7 costs on the different things on the Life Care  
8 Plan, let's take the cost of \$416 per year of the  
9 life care?

10 A. Page 1.

11 Q. When you came to the average area  
12 costs, are those the costs of three medical  
13 providers?

14 A. Yes, averaged.

15 Q. So you average those, and these other  
16 tables that talk about averages?

17 A. Are there other bodies that come up  
18 with average costs, like the Federal Government  
19 does the state costs.

20 Q. Isn't there tables of average costs?

21 MR. PLATTA: Over objection.

22 A. Yes, there is reflexes within her local  
23 area.

24 Q. But now you're saying that the other  
25 costs were regionalized?

0102

1 C. KINCAID, PH.D

2 A. Yes.

3 Q. What company comes up with the  
4 regionalized costs?

5 A. There were American Medical  
6 Associations.

7 Q. American Medical Associations?

0512from.txt

8 A. Yes.  
9 Q. And so your cost could differ from the  
10 American Medical Association?  
11 MR. PLATTA: Over objection.  
12 A. Without reviewing, I couldn't say yes  
13 or no.  
14 Q. So, would it be fair to say that there  
15 is also a data at the American Association that we  
16 could look at?  
17 MR. PLATTA: That's not what the expert  
18 says.  
19 Q. Would some of these different items of  
20 service be covered in the American Association  
21 rates?  
22 MR. PLATTA: If you know.  
23 A. I would have to look at the tables  
24 again.  
25 MR. COFFEY: Thank you. We're done.